

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:RFP:CHI:1:POSTF-147485-01

PPDavis

date: October 11, 2001

to: Area 3 Appeals Officer Leland Sorenson
LMSB Group 3

from: Associate Area Counsel, LMSB Chicago

subject: [REDACTED]
EIN [REDACTED]
Taxable year [REDACTED]
Earliest SOL: [REDACTED]
Consent Language
Request For An Advisory Opinion

This memorandum responds to your request for assistance dated September 4, 2001. This memorandum should not be cited as precedent. The issues herein do not appear to be within the scope of the responsibility of any Industry Counsel.

QUESTIONS PRESENTED

1. Under the facts set forth below, how should the name line and taxpayer signature line on the Consent Form be prepared?
2. Under the facts set forth below, should a Form 977 (Consent to Extend Time to Assess Liability at Law or in Equity for Income, Gift, and Estate Tax Against a Transferee or Fiduciary) and/or Form 2045 (Transferee Agreement) be obtained in this case?

FACTS

[REDACTED] (" [REDACTED]"), EIN [REDACTED], filed a Form 1120 as an independent entity for the taxable year ending [REDACTED]. On [REDACTED], [REDACTED] became a wholly-owned subsidiary of [REDACTED] (" [REDACTED]") through an I.R.C. §368(a)(1)(B) reorganization and filed as a subsidiary of [REDACTED] for the year ended [REDACTED].

The statute of limitations for matters regarding [REDACTED]'s [REDACTED] return will expire on [REDACTED].

█████ remains in existence and today operates as a subsidiary of █████. █████ attached a statement to its █████ tax return stating that on █████, there was an I.R.C. §351 transfer of land and depreciable improvements from █████ to █████. █████ received an unknown amount of common stock, no par value, in the exchange. Also attached to █████'s tax return is a statement as required by Treasury Regulation Section 1.368-3(a) pursuant to the section 368 reorganization. In this statement, █████ asserts that it did not assume any of the liabilities of █████ in the reorganization.

You are in the process of conducting the audit of the U.S. Income Tax Return (Form 1120) of █████ EIN █████ for the taxable years █████ and █████. You desire to obtain a consent to extend the period of assessment of income tax for the year █████ and have requested advice concerning the above-mentioned questions.

CONCLUSION

1. a. With respect to the preparation of Form 872 for the taxable year █████, the name line should read,

"████████████████████ (██████████)"

b. With respect to the preparation of Form 872, the corporate name on the signature line should read,

"████████████████████ (██████████)"

and the Form 872 should be signed by an officer of the corporation duly authorized to bind the corporation.

2. With respect to the second issue, it is not necessary to obtain Forms 977 and/or 2045 from █████ for the tax year █████. Because there was no merger and █████ is still in existence, it continues to be primarily liable for its █████ taxes.

In accordance with LMSB procedures, we are submitting this advisory opinion for review by our National Office and anticipate a response from the National Office in approximately ten days. As you know, the response can supplement, modify and/or reject the advice contained herein. Accordingly, please take no action on the advice contained herein until such time as we notify you as to whether or not there are any exceptions or modifications to the advice contained herein as a result of the response received from the National Office.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

If you have any questions concerning this matter, please call me at (312) 886-9225 ext. 336.

PAMELA V. GIBSON
Associate Area Counsel
(Large and Mid-Size Business)

By: _____
PATRICIA PIERCE DAVIS
Attorney